

# White and Williams LLP



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August 16, 2006

## By Hand Delivery

The Honorable Kent A. Jordan  
 J. Caleb Boggs Federal Building  
 844 N. King Street  
 Room 6325  
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 Wilmington, DE 19801

**RE: Blue Hen Hotel LLC v. Charles P. Arena  
 C.A. No. 05-00221 (KAJ)**

Dear Judge Jordan:

Pursuant to the paragraph #7 of the Scheduling Order entered on May 5, 2006, (D.I. #19), this letter is an interim status report on the nature of matters in issue and the progress of discovery to date.

In this action plaintiff, Blue Hen Hotel LLC ("Blue Hen") alleges that defendant, Charles P. Arena, ("Arena") violated the Delaware Prompt Payment Act, violated the Consumer Fraud Act and engaged in a series of Fraudulent Conveyances. These claims arise, in large part, from Arena's alleged personal receipt of funds paid by project owner Blue Hen to bankrupt general contractor, C. Arena & Co., that were owed to unpaid subcontractors on the pertinent construction project.

As to discovery, Blue Hen served Interrogatories and Requests for Production on Arena on or about February 13, 2006. Subsequently, Arena made approximately 14 boxes of construction project documents available for Blue Hen's inspection.

However, Arena has refused to respond to Blue Hen's interrogatories. Also defendant has refused Blue Hen's requests that Arena be made available for deposition. Arena has taken the position that further discovery should not proceed until the Court rules on defendant's pending Motion to (partially) Dismiss Pursuant to FRCP 12(b)(6), filed on September 2, 2005, (D.I. #5). The partial Rule 12(b)(6) motion has been fully briefed.

Blue Hen does not agree with Arena that discovery should be stayed pending disposition of the partial Rule 12(b)(6) motion. To date, Blue Hen has not filed a Motion to Compel Discovery; nor has Arena moved for a Protective Order.

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August 16, 2006  
Page 2

Pursuant to this Court's Order, dated June 6, 2006, (D.I. #22) a telephone conference is set for October 25, 2006 at 09:00 a.m. before Honorable Mary Pat Thyng. A Mediation Conference is tentatively set for February 1, 2007 at 10:00 a.m.

Plaintiffs' original counsel, Frank E. Noyes, Esquire, left the employ of White and Williams LLP, effective 8/15/06. A substitution of counsel was filed today, entering the appearance of the undersigned in place of Mr. Noyes as counsel for Blue Hen, (D.I. #23).

Respectfully submitted,

WHITE AND WILLIAMS LLP

By:

James S. Yoder

JSY:jsy  
cc: Adam Balick, Esquire by U.S. Mail